

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11497 OF 2022

Dr. Abdul Gaffar Quadri Abdul Razzaq

...Petitioner

Versus

Smt. Gazala Parveen W/o Dr Mazhar Mohiyoddin
And Others

...Respondents

Mr. S.S. Kazi, Advocate for the petitioner.

Mr. N.S. Muthiyan, Advocate for respondents.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th MARCH, 2023

ORDER :

1. Challenge in this petition is to the order passed by 10th Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-57 in Regular Civil Suit No. 625/2015, thereby rejecting the application filed by petitioner/plaintiff for amendment in plaint under Order 6 Rule 17 read with section 151 of Code of Civil Procedure.

2. The suit is filed by the plaintiff against respondents/defendants for specific performance of contract of four plots described in the plaint and for perpetual injunction, entered into by Dr. Mazhar Mohiyoddin S/o Aziz Mohiyoddin deceased father of defendants No. 1 to 3.

3. The defendants by filing written statement opposed the suit. The Trial Court has framed issues on 05.03.2016.

4. The plaintiff thereafter filed application Exhibit-57 seeking amendment in the plaint which is rejected. Hence, the present petition.

5. Heard the learned advocate for the petitioner, learned advocate for respondents. Perused the grounds raised in the petition, annexures thereto, impugned order and the citations relied upon by both parties.

6. By way of proposed amendment plaintiff sought permission to delete para no. 9 of the plaint and substitution of the same. It is the contention of the plaintiff that the proposed amendment does not change the nature of the suit. The amendment is necessary for deciding the suit on merits and for effective adjudication of the dispute between the parties. The plaintiff and late Dr. Mazhar had prepared lay out of 23 plots in the suit property. There was fiduciary relation between the plaintiff and late Dr. Mazhar. According to the plaintiff, entire account of sale transaction, receipts and signatures of plaintiff were kept with late Dr. Mazhar. It is not in dispute that the

defendants have produced said account receipts on record and some of the receipts bear signature of plaintiff. The plaintiff has admitted the receipts signed by him. In some sale deeds of the plots, plaintiff's signature appear as attesting witness. However, sale transaction are done in the name of late Dr. Mazhar. The defendants have filed copies of those sale deeds on record. Defendants opposed the amendment.

7. The Trial Court after going through the documents i.e. copy of sale deed, copies of agreements, copies of receipts, copy of expenditure from 20.06.1986 to 04.11.1986, copy of demarcated layout plan has held that these documents were produced on 14.03.2018 and plaintiff has filed the amendment application after four years. In the suit issues are framed and evidence is partly heard. Though, the plaintiff had knowledge about the documents he has not taken any effort and since the Trial has already commenced the Trial Court rejected the application.

8. It appears that the plaintiff has filed his evidence affidavit and his cross examination is yet to begin. The impugned order passed by the Trial Court is contrary to the settled legal position that the amendment is to be liberally allowed. By

proposed amendment it cannot be said that the plaintiff is trying to withdraw his admissions. The amendment sought by the plaintiff is necessary for proper adjudication of the suit and to decide real question in controversy. No prejudice is likely to be caused to the defendants if said amendment is allowed. However, if the amendment is refused it would cause injustice to plaintiff and may lead to multiplicity of litigation. The proposed amendment does not fundamentally change the nature and character of the suit. The power to allow the amendment can be exercised at any stage of proceeding, in the interest of justice. The Trial Court has adopted a hypertechnical approach while rejecting the amendment application.

9. In Revajeetu Builders and Developers vs. Narayanswamy and Sons and Others, (2009) 10 SCC 84, it is held that, *'the courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care. While deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments. The first condition which must be satisfied before the amendment can be*

allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment.'

10. In Narayana Pillai vs. Parameswaram Pillai, (2000) 1 SCC 712, it is held:

"3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and the Supreme Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in, the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

The case of the plaintiff is squarely covered by the aforesaid ratio.

11. In Vidyabai & Ors. vs. Padmalatha & Anr. (2009) 2 SCC 409, the applications for amendment were rejected by the Trial Court holding that entirely new case is sought to be made out. By considering various citations of the Apex Court it was held, '*It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.*'

It is held that, '*proviso to Order VI Rule 17 is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.*'

There cannot be any dispute about the said proposition of law. However, in the facts of the present case,

since amendment is necessary to determine the real controversy between the parties and as the amendment does not change the nature of the suit, this Court inclined to allow the amendment application. For lack of due diligence on the part of the plaintiff, appropriate compensation can be awarded to defendants. In the result, following order:-

ORDER

- i) The writ petition is allowed.
- ii) The impugned order dated 19.09.2022, passed by 10th Joint Civil Judge, Senior Division, Aurangabad below Exhibit-57 in Regular Civil Suit No. 625 of 2015 is hereby quashed and set aside.
- iii) Application Exhibit-57 is allowed on payment of cost of Rs. 10,000/- (Rupees Ten Thousand) by the plaintiff to the defendants in the Trial Court.
- iv) Amendment to be carried out within two weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI, J.]